

REMARKS

Claims 11-15 and 108-115 are currently pending in this application.

Claims 11-15 and 108-115 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 126-145 of co-pending application no. 10/758,008¹ in view of Klersy et al, U.S. Patent No. 5,177,567. This rejection is respectfully traversed.

Applicant respectfully submits that the '008 application is not a valid reference. Both the present application and the '008 application are divisional applications of U.S. Application 09/809,331, now U.S. Patent No. 6,734,455. Both the present application and the '008 application were filed in response to the same restriction/election requirement dated July 29, 2003, in the '331 application and before the issuance of the '455 patent. 35 U.S.C. § 121 "prohibits the use of a patent issuing on an application with respect to which a requirement for restriction has been made, or on an application filed as a result of such a requirement, as a reference against any divisional application, if the divisional application is filed before the issuance of the patent." M.P.E.P. § 804.01.

Moreover, according to M.P.E.P. § 804: "[t]he 'provisional' double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that 'provisional' double patenting rejection is the only rejection remaining in one of the applications. If the 'provisional' double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent . . ." (emphasis added). Therefore, Applicants respectfully request withdrawal of this rejection to permit the issuance of a patent on the present application as the '088 application is still pending.

¹ Application no. 09/758,008 appears in the Office Action. Applicants, however, assume that this is merely a typographical error and that the Examiner intended the application no. to read 10/758,008.

Application No.: 10/758,009
Amendment dated June 30, 2005
Reply to Office action dated April 6, 2005

Docket No.: M4065.0609/P609-D

In view of the above remarks, Applicant believes the pending application is in condition for allowance.

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Respectfully submitted,

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